UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1478
4 April 1996

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1478th MEETING

Held at Headquarters, New York,
on Wednesday, 20 March 1996, at 10 a.m.

Chairman: Mr. AGUILAR

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mauritius (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference and Support Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80315 (E)

/...

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Mauritius (continued) (CCPR/C/64/Add.12* and HRI/CORE/1/Add.60)

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (arts. 6, 7, 9, 10 and 14 of the Covenant) (section II of the list of issues) (continued)

Freedom of conscience, religion, expression, assembly and association (arts. 18, 19, 21 and 22 of the Covenant) (section III of the list of issues) (continued)

1. At the invitation of the Chairman, Mr. Peeroo and Mr. Seethulsingh (Mauritius) took places at the Committee table.

2. Mr. SEETHULSINGH (Mauritius) said that Mauritius used the common law definition of breach of the peace that pertained in English law. Broadly speaking, breaches of the peace involved threats to public order or safety and could be committed against an individual as well as a group. Breach of the peace was not considered a serious offence, and was usually remedied by binding an individual over to appear in court and requiring him to provide security. Likewise, contempt of court was a comparatively rare offence which only applied when deliberate attempts had been made to undermine respect for the judiciary. A recent and clear-cut case of contempt had involved a newspaper editor not bothering to check his facts before making allegations about favouritism on the part of the Chief Justice.

3. Regarding the granting of government contracts to judges, he agreed that justice should be seen to be above suspicion and the new Government was seeking to discontinue the practice. Convicted persons were allowed to take advantage of legal aid when appealing to higher courts, but such aid was not usually provided when a case passed from the Supreme Court to the Judicial Committee of the Privy Council. On the question of permission for public gatherings, he explained that the police did not necessarily require seven days' notice.

4. He reiterated that the Constitution was the supreme law of Mauritius and explained that, although there were certain instances in which the provisions of the Covenant were not fully reflected in the Constitution, the Mauritian Government was gradually seeking to match the provisions of both instruments, as evidenced by the abolition of the death penalty and the amendments to section 16 of the Constitution.

5. Turning to the power of the Commissioner of Police to detain individuals indefinitely, he said that suspects had to be brought before a court every week or every fortnight. Their detention was therefore subject to the supervision of the courts rather than that of the police. Such cases were normally referred to the Director of Public Prosecutions, who decided, usually within two or three

months, whether formal charges should be brought. At the same time there was nothing to prevent a detainee from being freed on bail during that period.

6. There had been no recent requests for asylum, and any decision to deport an individual taken by the Minister for Foreign Affairs had to be approved by a lower court. If that court upheld the Minister's decision, the deportee still had a final right of appeal to the Supreme Court.

7. With regard to the right to silence, the Mauritian authorities had not followed recent British practice, which allowed adverse inferences to be drawn from silence. Cases referred to the Ombudsman did not entail an automatic right to compensation; if an individual felt that his rights had been violated, he had to seek compensation through the courts in the normal manner. However, there was always the possibility of making out-of-court settlements.

8. With reference to the recent case in which a political organization had contested the amount by which electoral deposits had been raised, the Supreme Court had decided that the size of the increase would prevent people from standing for election and was therefore unconstitutional. The Government had originally amended the law to stop people from standing for frivolous reasons and obtaining large amounts of air time in exchange for a very modest deposit. In the wake of the Supreme Court ruling, electoral deposits had reverted to the previous amount of 250 rupees.

9. Finally, he informed the Committee that Mauritius had dropped its reservations to articles 11 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

10. Mr. PEEROO (Mauritius) said that Mauritius had ratified practically all the Conventions of the International Labour Organization (ILO) pertaining to fundamental rights and freedoms. The Mauritian authorities still had some reservations concerning Conventions Nos. 48, 87, 100 and 111, and were awaiting further guidance from ILO. Convention No. 125 had already been incorporated into Mauritian legislation through an amendment.

11. Lord COLVILLE said that the delegation had failed to deal with the issue of detention for seven days without charge arising out of sections 15 (1) (k) and (4) (a) of the Constitution of Mauritius. The wording of the statute was in itself vague and required explanation owing to its exceptional nature.

12. Ms. EVATT asked for further clarification regarding the book The Rape of Sita. Although no legal proceedings had been initiated and the book had not been formally banned, it nevertheless seemed that steps had been taken to make it unavailable.

13. Mr. BUERGENTHAL said that his question regarding a prisoner's right to appeal against aggravated prison default had still not been answered.

14. Mr. SEETHULSINGH (Mauritius) said that the provisions contained in section 15 of the Constitution were truly exceptional and were very rarely applied. Moreover, the rest of subsection (4) provided extensive safeguards for detainees in such situations.

15. Regarding the book The Rape of Sita, he confirmed that it had never been formally banned. Legal proceedings had been judged inadvisable because it would be extremely difficult to prove that the author had deliberately tried to stir up religious hatred. However, the Prime Minister had strongly recommended that the book should not be placed on sale since it was demonstrably an affront to religious sensibilities and would therefore cause social disruption. However, the Prime Minister's recommendation did not actually prevent anyone from reading the book.

16. With reference to aggravated prison default, he confirmed that the prison disciplinary board dealing with such cases was subject to review.

17. Mr. PEEROO (Mauritius) said that wide publicity had been given in Mauritius to the Covenant and the work of the Human Rights Committee. He had been interviewed by a newspaper which subsequently published a wide-ranging editorial on the topic of human rights. Finally, the Prime Minister had firmly committed his Government to the protection of human rights and the need to develop a nationwide moral stature capable of contributing at both the regional and the international level to the promotion of human rights and democracy.

18. Mr. BHAGWATI commended the Mauritian delegation for the frank and outspoken manner in which it had conducted its dialogue with the Committee, which spoke highly of the Government's respect of human rights. There were, however, certain disquieting aspects in respect of the human rights situation in Mauritius. Concerning the security of tenure and irremovability of judges, the fact that the Government could renew a judge's contract at its discretion was a source of some concern regarding the independence of the judiciary. He wondered whether the Government might not tend to offer extended contracts to those judges whose decisions had been favourable to the Government. He welcomed the news that the new Government was considering amending the Constitution to rectify that situation.

19. He would welcome further information regarding any legislation in force on the subject of the provision of legal aid services to citizens who could not afford to pay for the services of a lawyer. Legal aid should be a matter of right. As for protection against discrimination, the provision of the Constitution whereby such protection did not extend to persons who were not citizens of Mauritius was not in conformity with article 26 of the Covenant; he was glad to learn that the Government intended to review the situation in that respect. The Government should also take steps to disseminate to the public and particularly to human rights organizations the contents of the report before it was submitted to the Committee, as well as the comments of the Committee. He also proposed that arrangements should be made in Mauritius for legal aid lawyers to visit jails periodically to provide legal advice and, when necessary, legal representation to detainees. Detainees' correspondence should be free and unfettered, and where it was addressed to lawyers or to the courts, it should be uncensored. The report had also failed to make it clear in what circumstances detainees could be subjected to solitary confinement or be handcuffed; such forms of treatment were acceptable only in very exceptional circumstances, and those circumstances should be clearly defined in the country's legislation.

20. He urged the Government to introduce a freedom of information act, in line with article 19 of the Covenant. Regarding the seven days' notice required for public gatherings, he was glad to learn that that period was not inexorable and could in certain circumstances be reduced or dispensed with. The provision whereby persons detained under the Dangerous Drugs Act could be held for 36 hours without access to a lawyer needed to be reviewed. He would also welcome further information as to whether there was any provision for compensation for persons whose fundamental rights had been violated.

21. Mr. KRETZMER welcomed the full and frank replies that the representatives of Mauritius had given to the Committee's questions. The Government was clearly making serious efforts to make progress in meeting the requirements of the Covenant: examples of this were the abolition of the death penalty and the constitutional amendment concerning discrimination on the grounds of gender. He hoped that the current exchanges between the Committee and the Government would assist the latter in making continued progress towards full compliance with the provisions of the Covenant. However, he expressed some concern that the area of personal law was treated as an exception to the constitutional protections against discrimination; that exception should be reconsidered. He would also welcome, in a future report, full details regarding legislation to outlaw discrimination in the private sphere.

22. Regarding pre-trial detention, the current grounds for such detention, solely on the basis of the seriousness of the offence, were not consistent with the provisions of the Covenant. He welcomed the Government's statement that it planned to establish a police complaints board, and hoped that that board would be provided with sufficient resources.

23. Regarding the provisions of article 19 of the Covenant, the legislation providing for the criminal offence of disseminating false news should be reconsidered; it would be preferable for that criminal offence to be abolished, since it constituted a serious interference with the freedom of the press. The matter of the most serious concern was the information provided to the Committee regarding restrictions on the publication of books and films. The fact that a particular book which had been referred to in the Committee had been banned without the existence of any legal basis for such a ban was even more disquieting. He recalled that article 19, paragraph 3, of the Covenant provided that any restrictions on freedom of expression could only be such as were provided by law. He therefore requested the Government to reconsider the whole issue of such restrictions; if it was necessary that they should continue to exist, then appropriate legislation should be drawn up to provide a clear definition of the conditions in which they would be applied.

24. Mr. PRADO VALLEJO thanked the representatives of Mauritius for the replies that they had provided and for their efforts to conduct a positive dialogue with the Committee. Positive progress had clearly been made, demonstrating the Government's determination to improve the situation of human rights in Mauritius. There were however certain areas of concern such as the numerous instances of torture and ill-treatment of detainees by the police. New measures and mechanisms were required to overcome that problem, including thorough investigation, punishment of the perpetrators and compensation for the victims. Continued impunity would only lead to a worsening of the situation. A major

effort should be made to provide human rights instruction to the police. He was also preoccupied by the limits on freedom of expression which had been previously mentioned. It was clear that there could be no democracy without freedom of information. There was an urgent need for reforms to bring the domestic legislation of Mauritius in line with the rights set out in the Covenant, particularly in article 19.

25. Mrs. CHANET commended the Government of Mauritius for the progress that had been achieved, particularly in respect of the abolition of the death penalty. There were, however, some questions that remained to be answered, and she hoped that further progress would be achieved. The role of the Covenant in Mauritian law was a matter for concern, as was frequently the case in those countries where the Covenant was not self-executing and could therefore not be invoked directly in the courts. The Constitution of Mauritius contained derogations to certain articles of the Covenant; the consequent conflicts between the terms of the Covenant and the Constitution was a matter which required the Government's attention. One example was the fact that the inhabitants of certain small islands were deprived of the right to vote, which was in contradiction with the terms of article 25 of the Covenant, and the practice of imprisonment for civil debt was contrary to the terms of article 11. The gravity of the offence as the sole criterion for pre-trial detention required change in order to conform to articles 9 and 14. Reform was also required in order to avoid a recurrence of the situation in which a person could be expelled from the country while his appeal against the expulsion was still pending. She also concurred with the remarks of other members of the Committee on the subject of censorship.

26. Mr. MAVROMMATIS commended the new Government's commitment to re-examining the human rights situation and to making changes wherever necessary. One area requiring careful consideration was that of grounds of discrimination other than gender; although freedom of religion existed in Mauritius, that did not mean that discrimination on the grounds of religion should not be taken into account. It was also important to review the law of criminal libel and the law whereby disseminating false news was a criminal offence; both of those laws in their current form were anachronistic. He suggested that it would be useful to replace the current measures by establishing a press complaints commission. It was also inappropriate that the judiciary and its reputation should be protected by means of the law of contempt of court.

27. On the question of language, he urged the Government to ensure that teaching materials and other literature were made available in the vernacular languages. He also supported the suggestions of other members of the Committee regarding imprisonment for debt, and legal aid.

28. Mr. BUERGENTHAL congratulated the Government for its admirable human rights record and for the enviable climate of peace and harmony existing in such a multi-ethnic and multicultural society. There was, however, still room for improvement, and he expressed support for the remarks and suggestions made by the other members of the Committee. He also expressed concern on the subject of the power of the chief of police to issue permits for public meetings. There seemed to be no statutory basis on which the authorities could be compelled to issue such a permit; it was important that the enjoyment of human rights should not depend on the goodwill of the public authorities.

29. Ms. EVATT commended the Mauritian delegation for the information which they had provided in response to the Committee's questions. It was clear that the rule of law was held in high esteem in Mauritius. She congratulated the Government for the positive developments which had taken place, such as the abolition of the death penalty and the introduction of a police complaints board. She also commended the approach of the Mauritian courts to the question of extradition in cases where there was a danger of torture.

30. There were still some matters of concern, including the fact that the report had been provided late and that the Mauritian delegation had failed to follow up on certain questions which had been asked at the time of the Committee's examination of the previous report, and she hoped that that would be borne in mind when Mauritius presented its next report. There were still a number of outdated and inappropriate laws and attitudes, including excessive powers of detention. On the subject of censorship and of grounds of discrimination, she expressed agreement with the remarks of her colleagues. There was a need for anti-discrimination laws which would cover both the public and private sectors in areas such as education and employment. While the equal opportunities commission was welcome, there was a need for affirmative action programmes as an essential part of the necessary changes. The provision for personal laws in the Constitution was not appropriate and would tend to reinforce outdated traditional attitudes in areas where the requirements of equality must be given priority. She commended the Government for having withdrawn its reservations to the Convention on the Elimination of All Forms of Discrimination against Women, and welcomed the new initiatives in respect of domestic violence. It was clear that considerable attention was being given to law reform and to compliance with the provisions of the Covenant, and she hoped that that would continue.

31. Mr. POCAR said that while there had been notable improvements in the human rights situation since the previous report, as exemplified by the abolition of the death penalty, some concerns remained. In some cases the protection of human rights seemed to be based on the practice and goodwill of the administration rather than legal guarantees, and in some areas the Constitution was not in accordance with the Covenant. Although there had been movement towards lighter penalties, other provisions in that vein would be welcome.

32. Mr. EL-SHAFEI agreed that there had been identifiable improvements, for example, the abolition of the death penalty and legislative action to counter discrimination. However, the Committee had made a number of observations regarding statutory law in Mauritius, which should be duly taken into account by the authorities. In addition, some indication of whether the rights protected under the Covenant had been encroached upon during periods of emergency would be welcome. The attempts made by the Government of Mauritius to accommodate the disparate needs of a multi-ethnic and multicultural society were commendable, and worthy of emulation by others.

33. Mr. BÁN said that there had been a positive dialogue with the delegation, from which it was clear that Mauritius had made great progress in protecting the rights enshrined in the Covenant, for example, in terms of gender equality and in the area of citizenship. He welcomed the measures being taken by the Government to promote compliance with the Covenant and with reporting

obligations. Nevertheless there were areas of concern, in particular in respect of article 19. It was, for example, strange that in a democratic society there should be stringent restrictions on freedom of expression, which should be reconsidered.

34. Mr. BRUNI CELLI agreed that while there had been advances, areas of concern remained. In particular, given that the Covenant as such had an indicative status only in Mauritius, and given that Mauritius had ratified the Covenant more than 20 years earlier, the lack of domestic legislation in respect of articles 3, 19 and 25 was disquieting. While article 2 of the Covenant did not prescribe a time-limit for the adoption of legislative measures to give effect to the rights recognized therein, it was to be understood that such legislation should be adopted as quickly as possible following ratification.

35. Mr. ANDO said that although Mauritius had a good record in the field of human rights, he still had some concerns. With respect to personal status, although it was difficult to apply a uniform standard in a multi-ethnic society with varying traditions, that was essentially the aim of international instruments to protect human rights, and a greater effort needed to be made in that regard. As for freedom of expression, it was often the case that de facto limits were more negative than legal restrictions; the Government should address that area. The third area of concern was the failure to apply the provisions of a number of International Labour Organization conventions, which would assume greater relevance as the country's economy became more diversified and workers' rights came more to the fore.

36. Mr. KLEIN said that there were two issues of particular importance to him: gender equality and freedom of expression. The former had been addressed in constitutional changes and consequent legislation, but the situation of freedom of expression remained unsatisfactory. In particular, the prohibition on books and films and other vehicles of expression and the legislation governing the publication of false news were disquieting. Article 19 of the Covenant gave clear guidelines in that respect. A fundamental issue was whether the publication of false news as such should be prohibited at all. Nevertheless, Mauritius was moving in the right direction, and it was clear that there was genuine respect for human rights.

37. Mr. FRANCIS associated himself with the concerns expressed by other members of the Committee. He welcomed the abolition of the death penalty and the steps being taken by the authorities to ensure the independence of the judiciary and to harmonize Mauritian legislation with the Covenant.

38. The CHAIRMAN welcomed the forthright and fruitful dialogue with the delegation, but noted that various concerns had been raised. In particular the lacunae in the application of the Covenant's provisions were disquieting. For example, it appeared that the courts had noted discrepancies between Mauritian legislation and the Covenant but were powerless to act. A second area of concern was freedom of expression: there was de facto censorship with the prohibition of certain literary works, and the legislation on false news was anachronistic. Further, notwithstanding the success of Mauritius as a multicultural and multi-ethnic society, areas of discrimination remained. He welcomed the abolition of the death penalty, and expressed the hope that the

Government would seek to ratify the Second Optional Protocol. There were, however, many good things with respect to human rights in Mauritius, which was one of the few countries to have declared peace on the world.

39. Mr. PEEROO (Mauritius) welcomed the fruitful dialogue with the Committee, and said that the Government would make every effort to comply with the requirements of the Covenant and to take account of the points raised by the Committee.

40. Mr. Peeroo and Mr. Seethulsingh (Mauritius) withdrew.

The meeting was suspended at 12.15 p.m. and resumed at 12.30 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Lists of issues to be taken up in connection with the consideration of reports submitted by States parties under article 40 of the Covenant (continued)
Initial report of Nigeria (CCPR/C/92/Add.1)

41. The CHAIRMAN recalled that Nigeria had submitted an initial report - overdue since October 1994 - in response to a decision the Committee had taken under rule 66 of its rules of procedure, requesting it to report in particular on articles 6, 7, 9 and 14 of the Covenant and expressing its deep concern over recent executions after trials not in conformity with the Covenant.

42. Mr. KRETZMER, supported by Ms. EVATT, the CHAIRMAN, speaking in his personal capacity, Mr. BRUNI CELLI and Mr. BUERGENTHAL, proposed that, since concern over the executions, of Ken Saro Wiwa and other members of his Ogoni movement had prompted the Committee to request a report, its concern should be reflected in the presentation of the list of issues. The list should be subdivided, and the issues relevant to those events and to the articles cited should be put first.

43. The CHAIRMAN pointed out that, at Nigeria's insistence, its report would be considered on only a single day rather than the usual two. Since the important issue involved required time, consideration of part of the report might have to be carried over to the Committee's July session in Geneva.

44. Ms. EVATT said that there would be many benefits to having the Committee issue its concluding comments on Nigeria at the current session, so as to publish them at the earliest possible time, especially in view of the fact that the Commission on Human Rights was also currently in session.

45. Lord COLVILLE observed that a special tribunal in Rivers state, Nigeria, which was technically in recess at the moment, was waiting to try three more persons. It would therefore be very valuable if a way were devised to publish concluding comments - or at least a part of them - at the current session. The delegation would also have to be restrained from spinning out its answers to less urgent questions.

46. Mr. KRETZMER, supported by Mr. ANDO, Ms. MEDINA QUIROGA, Mr. POCAR, Mr. BHAGWATI, Mr. BÁN and Mr. KLEIN, proposed dividing the list of issues into

two sections. Since the delegation must not be allowed any opportunity for a filibuster, he proposed avoiding issue (a), dealing with the general constitutional and legal framework, at the outset, and instead moving immediately to the key issues and articles in the first section.

47. It was so decided.

48. Mr. LALLAH proposed that, as suggested, the list should be divided into two sections. After the delegation had responded to the key issues in the first section, the Committee could put further questions, and nothing precluded it from then adopting concluding comments that would be final, on that section alone. A filibuster would thus be avoided, and the remainder of the list of issues could be dealt with at the July session.

49. It was so decided.

50. Mr. ANDO suggested deleting issue (h) and putting the question orally to the delegation.

51. It was so decided.

52. Ms. EVATT, supported by Mr. POCAR said that prominence should be given to the courts and their jurisdiction, and thus issues (l) and (f) should be addressed at the outset.

53. Lord COLVILLE said, with regard to issue (l), that the military courts were not necessarily the problem in Nigeria but rather "special tribunals" which were set up to try all sorts of cases, including military ones.

54. Ms. EVATT concurred, and suggested amending issue (l) to read:

> "Please describe the constitution, membership and jurisdiction of all special military courts and tribunals, and the law and procedure applied by them in criminal matters. Under what circumstances, if any, do military courts have jurisdiction over crimes allegedly committed by citizens or over civil crimes allegedly committed by military officials?"

55. The CHAIRMAN said that he took it the Committee wished to adopt issue (f), issue (l) as amended, and issues (g) and (j), as section I of the list of issues; and to adopt issues (a), (b), (c), (d), (e), (i), (m) and (n), as section II of the list.

56. It was so decided.

The meeting rose at 1.05 p.m.